

Zoning Text Amendment No.: 16-20
Concerning: Overlay Zone – Bethesda
Draft No. & Date: 2-11/30/16
Introduced: December 6, 2016
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- establish the Bethesda Overlay zone with defined terms, development and land use standards, and procedures for development approvals; and
- generally amend provisions concerning Overlay zones

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

ARTICLE 59-1.	“General Zoning Ordinance Provisions”
Section 1.4.2.	“Specific Terms and Phrases Defined”
ARTICLE 59-2.	“Zones and Zoning Map”
Section 2.1.2.	“Zoning Categories”
ARTICLE 59-4.	“Development Standards for Euclidean Zones”
Division 4.9.	“Overlay Zones”
Section 4.9.2.	“Burtonsville Employment Area (BEA) Overlay Zone”
Section 4.9.3.	“Chevy Chase Neighborhood Retail (CCNR) Overlay Zone”
Section 4.9.4.	“Clarksburg East Environmental (CEE) Overlay Zone”
Section 4.9.5.	“Clarksburg West Environmental (CWE) Overlay Zone”
Section 4.9.6.	“Community-serving Retail (CSR) Overlay Zone”
Section 4.9.7.	“Fenton Village (FV) Overlay Zone”
Section 4.9.8.	“Garrett Park (GP) Overlay Zone”
Section 4.9.9.	“Germantown Transit Mixed Use (GTMU) Overlay Zone”
Section 4.9.10.	“Montgomery Village (MV) Overlay Zone”
Section 4.9.11.	“Regional Shopping Center (RSC) Overlay Zone”
Section 4.9.12.	“Ripley/South Silver Spring (RSS) Overlay Zone”
Section 4.9.13.	“Rural Village Center (RVC) Overlay Zone”
Section 4.9.14.	“Sandy Spring/Ashton Rural Village (SSA) Overlay Zone”

Section 4.9.15.	“Takoma Park/East Silver Spring Commercial Revitalization (TPESS) Overlay Zone”
Section 4.9.16.	“Transferable Development Rights (TDR) Overlay Zone”
Section 4.9.17.	“Twinbrook (TB) Overlay Zone”
Section 4.9.18.	“Upper Paint Branch (UPB) Overlay Zone”
Section 4.9.19.	“Upper Rock Creek (URC) Overlay Zone”

And adding:

Section 1.4.2	“Bonus Density”
Section 4.9.2.	“Bethesda (B) Overlay Zone”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. ARTICLE 59-1 is amended as follows:

* * *

Division 1.4. Defined Terms

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Section 1.4.2. Specific Terms and Phrases Defined

In this Chapter, terms that are not specifically defined have their ordinary meaning.

The following words and phrases have the meanings indicated.

* * *

Bonus Density: See Section 4.9.2.C.2.a

* * *

Sec. 2. ARTICLE 59-2 is amended as follows:

Division 2.1. Zones Established

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Section 2.1.3. Establishment of Zones

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G. Overlay Zones

1. There are [18] 19 Overlay zone classifications:

a. Bethesda (B),

[a] b. Burtonsville Employment Area (BEA),

[b] c. Chevy Chase Neighborhood Retail (CCNR),

[c] d. Clarksburg East Environmental (CEE),

[d] e. Clarksburg West Environmental (CWE),

[e] f. Community-serving Retail (CSR),

[f] g. Fenton Village (FV),

[g] h. Garrett Park (GP),

[h] i. Germantown Transit Mixed Use (GTMU),

[i] j. Montgomery Village (MV),

[j] k. Regional Shopping Center (RSC),
 [k] l. Ripley/South Silver Spring (RSS),
 [l] m. Rural Village Center (RVC),
 [m] n. Sandy Spring/Ashton Rural Village (SSA),
 [n] o. Takoma Park/East Silver Spring Commercial Revitalization
 (TPESS),
 [o] p. Transferable Development Rights (TDR),
 [p] q. Twinbrook (TB),
 [q] r. Upper Paint Branch (UPB), and
 [r] s. Upper Rock Creek (URC).

2. Building types, uses, density, height, and other standards and
 requirements may be modified by the Overlay zones under Section
 4.9.2 through Section [4.9.19] 4.9.20.

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Sec. 3. ARTICLE 59-4 is amended as follows:

Division 4.9. Overlay Zones

* * *

Section 4.9.2. Bethesda (B)

A. Purpose

The purpose of the Bethesda Overlay Zone is to appropriately allocate
 density within the Bethesda Downtown area that will protect existing
 residential neighborhoods, provide additional land for parks and open space,
 expand the County's affordable housing inventory, promote high quality
 design, and modify density averaging provisions for Priority Sending Sites.

B. Land Uses

1. The land uses of the underlying zones are applicable.

2. Surface Parking for Use Allowed in the Zone is not allowed on a Priority Sending Site from which density has been transferred.

C. Development Standards

1. Building Height

- a. Except as provided in subsection b, the maximum building height is limited to the height allowed in the underlying zone.
- b. Subsection 4.7.3.D.6.c.i. only applies within the High Performance Area designated in the Bethesda Downtown Plan.

2. Density

- a. A development may exceed the mapped CR or CRT FAR on a site if the Planning Board approves, on a sketch and site plan, the allocation of FAR from Bonus Density. Bonus Density is the total square footage by which approved development in the Downtown Bethesda plan area may cumulatively exceed the maximum square footage allowed under the mapped CR and CRT zones. Bonus Density is limited to 3,289,000 square feet.
- b. FAR allocated from Bonus Density may be developed with any Commercial or Residential use allowed in the underlying zone.
- c. To qualify for Bonus Density FAR, a proposed development must:
 1. Use all mapped CR or CRT FAR associated with the property. Density may not be transferred from the property.
 2. Provide a minimum of 15 percent MPDUs, excluding any Bonus Density transferred from a Priority Sending Site.
 3. Make a Park Impact Payment before the filing of any building permit application at a rate of \$10 per square

foot of approved Bonus Density FAR. If a property owner dedicates land designated in the master plan as a recommended/enhanced open space to the M-NCPPC Parks Department, the Planning Board may reduce the amount of square footage for which a Park Impact Payment must be made.

4. Be reviewed by the Design Review Advisory Panel at sketch plan and site plan review to help ensure the development achieves the highest level design quality, consistent with the master plan, design guidelines, and other applicable requirements.

d. The Public Use Space requirement under Section 4.5.4.B.1.a may be reduced by the Planning Board.

e. A project that makes a Park Impact Payment may qualify for up to 10 incentive density points under the category of major public facility.

3. FAR Averaging

a. The Bethesda Downtown Plan designates certain properties as Priority Sending Sites to encourage the creation or enlargement of urban parks, protect significant historic and community resources, and retain existing affordable housing.

b. Density transferred from a Priority Sending Site may be included in a sketch plan or site plan application for any CR or CRT-zoned site within the Sector Plan Area boundary.

c. Density transferred from a Priority Sending Site may be used on another site without the Priority Sending Site being under the same sketch plan or site plan.

- d. Density transferred from a Priority Sending Site is exempt from the BLT purchase requirements of Section 4.7.3.F.1.a.
- e. Before a certified site plan for a development using density transferred from an Open Space Priority Sending Site may be approved, all development rights must be extinguished on the Open Space Priority Sending Site by a recorded instrument approved by the M-NCPPC.
- f. Before a certified site plan for a development using density transferred from an Affordable Housing Priority Sending Site may be approved, the owner of the sending site must enter into an agreement with the Department of Housing and Community Affairs to retain a minimum of 30 percent of the existing affordable housing units, defined as 65 percent of Area Median Income (AMI) or below, for 20 years.
- g. Before a certified site plan for a development using density transferred from a Historic/Community Resource Priority Sending Site may be approved, all development rights not associated with an existing structure, and any amount of square footage determined by the Planning Board in reviewing a Sketch Plan to be necessary for operational purposes, must be extinguished on the Historic/Community Resource Priority Sending Site by a recorded instrument approved by the M-NCPPC.
- h. If all or part of an Open Space Priority Sending Site off of which no density has been transferred is dedicated to the M-NCPPC Parks Department, it may qualify for public benefit points as a major public facility.

- i. If all or part of a Historic/Community Resource Priority Sending Site off of which no density has been transferred is dedicated to the M-NCPPC Parks Department, it may qualify for public benefit points as a major public facility.

D. Development Procedures

1. Sketch plan and site plan approval under Section 7.3.3 and Section 7.3.4, respectively, are required for all development in the Bethesda Overlay zone that uses the FAR averaging provisions of Section 4.9.2.C.3.
2. To approve a site plan with Bonus Density FAR, the Planning Board must find that the proposed allocation of FAR from Bonus Density, in addition to all previously approved allocations, does not exceed 3,289,000 square feet.
3. Within 2 years of when the Planning Board approves a site plan using Bonus Density, the applicant must provide the Planning Department proof of acceptance of the core and shell building permit application no later than 15 days after the Department of Permitting Services accepts it. No later than two years after the Department of Permitting Services accepts the core and shell building permit application, the applicant must obtain at least a core and shell building permit. The deadlines for applying for and obtaining a core and shell building permit under this section may not be extended. If an applicant fails to apply for or obtain a building permit within the time allowed under this section, the site plan approval is revoked.

Section [4.9.2] 4.9.3. Burtonsville Employment Area (BEA) Overlay Zone

B. Land Uses

1. The following uses are prohibited:

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- k. Light Manufacturing and Production, except as noted in Section [4.9.2.B.3] 4.9.3.B.3;

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Section [4.9.3] 4.9.4. Chevy Chase Neighborhood Retail (CCNR) Overlay Zone

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Section [4.9.4] 4.9.5. Clarksburg East Environmental (CEE) Overlay Zone

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D. Development Standards

1. Except as allowed under Section [4.9.4.B] 4.9.5.B, the maximum total impervious surface area for any development after August 4, 2014 is 15% of the total area under application for development.

* * *

E. Site Plan

1. Any development that must file a preliminary plan of subdivision under Chapter 50 requires approval of a site plan by the Planning Board under Section 7.3.4, unless excluded under Section [4.9.4.E.2] 4.9.5.E.2.

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Section [4.9.5] 4.9.6. Clarksburg West Environmental (CWE) Overlay Zone

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D. Development Standards

1. Except for County owned land or land under a conservation easement granted to the benefit of the County and development exempted under

Section [4.9.5.B] 4.9.6.B, the maximum total impervious surface area for any development after August 4, 2014 is 6% of the total area under application for development.

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E. Site Plan

1. Any development that must file a preliminary plan of subdivision under Chapter 50 requires approval of a site plan by the Planning Board under Section 7.3.4, unless excluded under Section [4.9.5.E.2] 4.9.6.E.2 or Section [4.9.5.E.3] 4.9.6.E.3.

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Section [4.9.6] 4.9.7. Community-serving Retail (CSR) Overlay Zone

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Section [4.9.7] 4.9.8. Fenton Village (FV) Overlay Zone

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C. Development Standards

1. Building Height

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- b. Maximum building height is 60 feet along any street confronting any block that includes property in a Residential Detached zone and, when a building is allowed to be higher than 60 feet under Section [4.9.7.C.1.c] 4.9.8.C.1.c, each additional foot in building height above 60 feet requires at least an additional one foot stepback from the front of the building along Fenton Street;

* * *

- e. For properties with frontage on both Wayne Avenue and Fenton Street, in spite of the height limitations in Section [4.9.7.C.1.b]

4.9.8.C.1.b through Section [4.9.7.C.1.d] 4.9.8.C.1.d, maximum building height may be increased by 15 feet for a building that includes residential uses or a mix of residential and commercial uses, if such additional height is not more than 200 feet from the right-of-way line for Fenton Street as recommended in the Approved and Adopted 2000 Silver Spring CBD Sector Plan; however, any building using additional height must be set back from abutting Residentially zoned land no less than the setback required in the abutting Residential zone or the height of the building, whichever is greater.

- f. Building heights may be approved under the standards of Section [4.9.7.C.1] 4.9.8.C.1 without regard to the building height recommendations of the master plan.

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Section [4.9.8] 4.9.9. Garrett Park (GP) Overlay Zone

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C. Land Uses

The land uses and use standards of the underlying zone are applicable unless the development standards in Section [4.9.8.D] 4.9.9.D are more restrictive, in which case Section [4.9.8.D] 4.9.9.D must be followed.

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Section [4.9.9] 4.9.10. Germantown Transit Mixed Use (GTMU) Overlay Zone

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Section [4.9.10] 4.9.11. Montgomery Village (MV) Overlay Zone

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E. Existing Buildings and Uses

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3. a. A legal use existing on February 28, 2016 is conforming and may be continued. Expansion of any such use must satisfy the standards of the current zone under Article 59-3.
- b. An existing Charitable, Philanthropic Institution (as defined by Section 3.4.2) may expand without conditional use approval, but must satisfy Section [4.9.10.D] 4.9.11.D.
- c. An existing Storage Facility (as defined by Section 3.6.8.e.1) owned and operated by a Charitable, Philanthropic Institution may expand by up to the lesser of 10% or 30,000 square feet without conditional use approval, but must satisfy Section [4.9.10.D] 4.9.11.D.

Section [4.9.11] 4.9.12. Regional Shopping Center (RSC) Overlay Zone

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D. Site Plan

Site plan approval under Section 7.3.4 is required for any increase in building height under Section [4.9.11.C.1] 4.9.12.C.1.

E. Parking

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2. Pedestrian Access

The major point of pedestrian access for an off-street parking facility that occupies contiguous land area integral to the regional shopping center property may extend more than 500 feet walking distance from an entrance to the center to satisfy the number of spaces required under Section [4.9.11.E.1.a] 4.9.12.E.1.a.

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Section [4.9.12] 4.9.13. Ripley/South Silver Spring (RSS) Overlay Zone

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Section [4.9.13] 4.9.14. Rural Village Center (RVC) Overlay Zone

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C. Development Standards

1. Where a lot is either partially or totally in a Commercial/Residential zone:

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- e. In addition to the parking requirements in Division 6.2:

* * *

- iii. For any cumulative enlargement of a surface parking facility that is greater than 50% of the total parking area approved before November 4, 2002, the entire off-street parking facility must be brought into conformance with Section [4.9.13] 4.9.14.

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Section [4.9.14] 4.9.15. Sandy Spring/Ashton Rural Village (SSA) Overlay Zone

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Section [4.9.15] 4.9.16. Takoma Park/East Silver Spring Commercial Revitalization (TPRESS) Overlay Zone

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D. Site Plan

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3. For any addition, reconstruction, or alteration that changes a building by less than 1,000 square feet and does not require site plan approval under Section [4.9.15.D.1.c] 4.9.16.D.1.c, the Planning Board or its designee must review the building permit to determine compliance with master plan recommendations and the provisions of this Overlay

zone. If an existing building is located on the site or on an adjacent property, the minimum setback of the zone may be reduced to conform to the existing setback on the site or on the adjacent property.

Section [4.9.16] 4.9.17. Transferable Development Rights (TDR) Overlay Zone

B. Optional Method

1. In General

The TDR Overlay optional method of development permits an increase in the maximum residential density, if the development satisfies the requirements for optional method development using Transferable Development Rights under Section [4.9.16.B] 4.9.17.B.

a. Applicability

The procedures and requirements in Section [4.9.16.B] 4.9.17.B apply to the transfer of development rights from land in the AR zone to land in a Transferable Development Rights (TDR) Overlay zone. The Planning Board may approve subdivision of such land at densities up to the maximum density allowed in the applicable TDR Overlay zone and substantially conforming to the recommendations in the applicable master plan.

c. Recording of Development Right

- ii. A final record plat for a subdivision using transferred development rights must contain a statement including the development proposed, the zoning classification of the property, the number of development rights used, and

a notation of the recordation of the conveyance as
required by Section [4.9.16.B] 4.9.17.B.

d. Development with Moderately Priced Dwelling Units

- i. A property developed under Section [4.9.16.B] 4.9.17.B must satisfy Chapter 25A.
- ii. A density bonus allowed under Chapter 25A is calculated after the base density of the property has been increased under Section [4.9.16.B] 4.9.17.B through TDRs.

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e. Additional Findings

In addition to the findings required for approval of a site plan under Section 7.3.4, for projects developed under Section [4.9.16.B] 4.9.17.B, the Planning Board must find that the proposed development provides an appropriate range of housing types that takes advantage of existing topography and environmental features and achieves a compatible relationship between the proposed development and adjoining land uses.

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Section [4.9.17] 4.9.18. Twinbrook (TB) Overlay Zone

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Section [4.9.18] 4.9.19. Upper Paint Branch (UPB) Overlay Zone

* * *

B. Exemptions

The following are exempt from Section [4.9.18] 4.9.19:

* * *

C. Land Uses

1. Except as listed in Section [4.9.18.C.2] 4.9.19.C.2 and Section [4.9.18.C.3] 4.9.19.C.3, the land uses of the underlying zone apply. The use standards of the underlying zone apply unless the development standards in Section [4.9.18.D] 4.9.19.D are more restrictive, in which case Section [4.9.18.D] 4.9.19.D must be followed.

* * *

3. If validly existing on July 1, 1997, the uses in Section [4.9.18.C.2] 4.9.19.C.2 may be continued under the requirements in effect at the time the use was established. Any expansion requires compliance with the UPB Overlay zone.

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E. Waiver

The applicable review body may grant a waiver of the development standards in Section [4.9.18.D] 4.9.19.D if it finds that:

* * *

4. Alternative water quality and control techniques are used to meet the purposes of Section [4.9.18] 4.9.19.

Section [4.9.19] 4.9.20. Upper Rock Creek (URC) Overlay Zone

* * *

B. Exemptions

1. The following are exempt from Section [4.9.19] 4.9.20:

* * *

D. Waiver

The applicable review body may grant a waiver of the development standards in Section [4.9.19.C] 4.9.20.C if it finds that:

* * *

4. Alternative water quality and quantity control techniques are used to meet the purposes of Section [4.9.19] 4.9.20.

* * *

**Sec. 4. OLD ZONING ORDINANCE TO NEW ZONING
ORDINANCE SECTION CROSS REFERENCE is amended as follows:**

Old ZONING ORDINANCE Article 59-C: Zoning Districts; Regulations.	New ZONING ORDINANCE
* * *	
Division 59-C-18. Overlay Zones.	
* * *	
Sec. 59-C-18.11. Residential and open space preservation overlay zone for the Town of Garrett Park.	Sec. [4.9.8] <u>4.9.9</u> . Garrett Park (GP) Overlay Zone
* * *	
Sec. 59-C-18.14. Overlay zone for the Burtonsville Employment Area of the Fairland Master Plan.	Sec. [4.9.2] <u>4.9.3</u> . Burtonsville Employment Area (BEA) Overlay Zone
Sec. 59-C-18.15. Environmental Overlay Zone for the Upper Paint Branch Special Protection Area.	Sec. [4.9.18] <u>4.9.19</u> . Upper Paint Branch (UPB) Overlay Zone
* * *	
Sec. 59-C-18.17. Chevy Chase neighborhood retail preservation overlay zone.	Sec. [4.9.3] <u>4.9.4</u> . Chevy Chase Neighborhood Retail (CCNR) Overlay Zone
Sec. 59-C-18.18. Sandy Spring/Ashton Rural Village Overlay Zone.	Sec. [4.9.14] <u>4.9.15</u> . Sandy Spring/ Ashton Rural Village (SSA) Overlay Zone
Sec. 59-C-18.19. Fenton Village Overlay Zone.	Sec. [4.9.7] <u>4.9.8</u> . Fenton Village (FV) Overlay Zone
Sec. 59-C-18.20. Ripley/South Silver Spring Overlay Zone.	Sec. [4.9.12] <u>4.9.13</u> . Ripley/South Silver Spring (RSS) Overlay Zone
Sec. 59-C-18.21. Takoma Park/East Silver Spring commercial revitalization overlay zone.	Sec. [4.9.15] <u>4.9.16</u> . Takoma Park/ East Silver Spring Commercial Revitalizations (TPESS) Overlay Zone
Sec. 59-C-18.22. Neighborhood retail overlay zone.	Sec. [4.9.6] <u>4.9.7</u> . Community-serving Retail (CSR) Overlay Zone
Sec. 59-C-18.23. Rural village center overlay zone.	Sec. [4.9.13] <u>4.9.14</u> . Rural Village Center (RVC) Overlay Zone
Sec. 59-C-18.24. Environmental overlay zone for the Upper Rock Creek Special Protection Area.	Sec. [4.9.19] <u>4.9.20</u> . Upper Rock Creek (URC) Overlay Zone

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384 **Sec. 4. Effective date.** This ordinance becomes effective 20 days after the
385 date of Council adoption.

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387 This is a correct copy of Council action.

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390 Linda M. Lauer, Clerk of the Council